

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

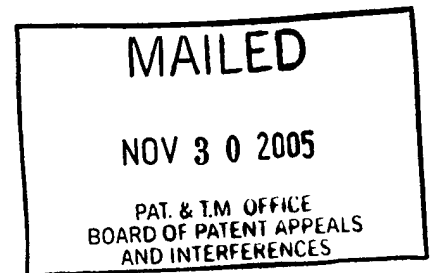
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN PAUL BRENNAN and JAMES RALPH BRADFORD

Appeal No. 2005-2322
Application No. 09/654,444

ON BRIEF



Before RUGGIERO, DIXON, and LEVY, Administrative Patent Judges.
LEVY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-10 and 12-23. Independent claims 11 and 24 have been allowed (answer, pages 4 and 9).

We REVERSE.

BACKGROUND

The appellants' invention relates to a method and apparatus for routing an Advanced Intelligent Network (AIN) call to the appropriate carrier for call completion (specification, page 2). Claim 1 is representative of the invention, and is reproduced as follows:

1. A method for selecting a carrier type for routing a call for AIN-based customers of the LEC, said method comprising the following steps in the order given:

determining whether a called party is inside a local calling scope of a calling party;

responsive to a determination that said called party is inside said local calling scope of said calling party, selecting a first carrier as said carrier type; and,

responsive to a determination that said called party is outside said local calling scope of said calling party, selecting a second carrier as said carrier type if an originating LATA of said calling party and a terminating LATA of said called party are the same and selecting a third carrier as said carrier type if said originating LATA and said terminating LATA are different.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Culli et al. (Culli)	6,205,214	Mar. 20, 2001
		(filed Jul. 9, 1998)

Claims 1-10 and 12-23 stand rejected under 35 U.S.C.

§ 103(a) as being unpatentable over Culli.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer (mailed December 1, 2004) for the examiner's complete reasoning in support of the rejection, and to the brief (filed January 27, 2003) for the appellants' arguments thereagainst.

Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered. See 37 CFR § 41.37(c)(1)(vii)(eff. Sept. 13, 2004).

OPINION

In reaching our decision in this appeal, we have carefully considered the subject matter on appeal, the rejection advanced by the examiner, and the evidence of obviousness relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer. Upon consideration of the record before us, we make the determinations which follow. We begin with claim 1.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.) cert denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985) cert denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the

applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole. See id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

The examiner's position can be found on pages 5 and 6 of the examiner's answer.

Appellants' position (brief, page 4) is, inter alia, that Culli does not disclose:

Responsive to a determination that said called party is outside said local calling scope of said calling party, selecting a second carrier as said carrier type if an origination LATA of said calling party and a terminating LATA of said called party are the same and selecting a third carrier as said carrier type if said originating LATA and said terminating LATA are different.

It is argued (brief, pages 4 and 5) that Culli does not, after determining whether a call is local, select a second carrier as the carrier type if an originating LATA of a calling party and a terminating LATA of a called party are the same, and selecting a third carrier if the originating and terminating LATA are different.

From our review of Culli, we find that the reference relates to a local routing system enabling a local exchange carrier (LEC) to route network traffic according to a local service provider's preferences (col. 1, lines 20-23). In order to meet FCC requirements to provide competitive LECs (CLECs) the same dialing plans offered by the LEC with alternate routing, etc., the existing LCC (special transaction known as a line class code) transactions could be duplicated and altered as required (col. 1, lines 51 and 62-66). A local routing system routes traffic according to a local service providers (LSPs) preferences. The LSP provides service for lines acquired from an LEC.

An originator subscribes to the LSP. The originator initiates a trigger by dialing a number (col. 2, lines 24-29). The local routing system includes a classifier, a determiner and a router. The classifier analyzes the dialed number and categorizes it into one of a number of classes of traffic. Culli further discloses (col. 2, lines 36-42) that "[t]he determiner determines whether the local service provider has a routing preference for the class of traffic into which the classifier has placed the call. The router routes the traffic to the destination according to the local service provider's routing preference if a routing preference exists for the class of

traffic into which the classifier placed the call." The determiner determines the routing preference for each switch within the LSP network. The router routes the call to the destination according to the LSP's preferences (col. 3, lines 42-46). According to a preferred embodiment (col. 2, lines 43-49):

The local routing system also includes a filter which analyzes the dialed number and determines whether the call is local. The filter determines whether the call is local by first comparing an originating local access and transport area (LATA) with a destination LATA, and if the LATAs are identical, the filter checks whether the destination NPANXX is within the local calling scope of the originator.

If the call is not local, it is routed to a non-local switch (col. 3, lines 49 and 50). Filtered calls are routed according to the LEC's instructions (col. 3, lines 8 and 9). According to the preferred embodiment, the local routing method includes filtering all calls to predetermined numbers, thereby blocking the filtered calls from being analyzed, classified and routed according to the LSP's preference. Consequently, the filtered calls are routed according to the LEC carrier's instructions (col. 4, lines 11-17).

It is further disclosed that any type of network traffic can be routed according to a service provider's preferences. Intra LATA traffic, etc., can be routed (col. 5, lines 29-37). It is

further discloses (col. 5, line 65 through col. 6, line 3) that "[a]lthough local operator and local directory assistance traffic is referred to throughout this description, the LRS (local routing system) can be easily modified to include intra-LATA operator and directory assistance traffic, inter-LATA operator and directory assistance traffic, etc." Because LRS is only applied to local calls, a filtering function is applied to distinguish local calls from intra-LATA toll and inter-LATA toll calls.

Inter-LATA calls can be identified through the nature of the nature of number (NON) associated with the called number (CDN) and the use of integrated services control point (ISCP) supported NPANXX¹ table. The table maps each NPANXX to a specific LATA. If the LATAs are not the same, the call is determined to be an inter-LATA call. However, local and intra-LATA calls are not so easily distinguished. The NON for all ten digit dialing is national so NON is not an adequate discriminator between local, intra-LATA and inter-LATA (col. 18, lines 24-46). A local database is used to define all valid local call scopes for an originating NPANXX. Every originating NPANXX has an associated local calling scope. The local routing system (LRS) will use the

¹ the first six digits of a ten digit telephone number.

local calling scope. The local routing system (LRS) will use the local database (LDB) to discriminate between local and inter-LATA calls that are dialed with 10 digits. Thus, a simple lookup will be able to determine whether the call is local or intra-LATA toll (col. 18, lines 47-59).

In addition, the resold services (LRR) (col. 6, line 9) identifies seven digit local traffic based on the number of digits dialed by the calling party (col. 22, lines 7 and 8). The logic determines whether intra-LATA operator and directory assistance calls should be routed to the LSP. If yes, a determination is made as to whether the NPA dialed is the same as the calling number. If the NPAs are identical, the traffic is routed to the LSP. Otherwise, a lookup in the LATA table is made to see if the called number is in the same LATA as the calling number. If the called number and the calling number are within the same LATA, the traffic is routed to the LSP. Otherwise, the traffic is routed normally, to an interexchange carrier (IXC). The LSR logic also identifies the intra-LATA and inter-LATA, etc. traffic based on the NPA (first three digits of the ten digit number) being 800, 888, etc., and returns the called number to the SSP as correctly dialed traffic (col. 22, lines 20-33). It is further disclosed (col. 22, lines 39-46) that:

The LRS logic identifies ten digit inter-LATA traffic, both direct dialed and operator, based on the LATAs of the calling party and the called party not being equal. A lookup is done in the ISCP's LATA table to determine the LATA of both the calling party and the called party. If the LATAs are not equal, the traffic is determined as being inter-LATA, in which case it is returned as dialed to the SSP and validated as correctly dialed inter-LATA traffic.

From the disclosure of Culli, it is clear that the reference routes local, intra-LATA and inter-LATA calls. However, as to the limitations of claim 1, we find that the claim does not preclude additionally checking the LATA to determine if the call is a local call. However, although Culli discloses checking the LATA as part of determining whether a called party is within a local calling scope of a called party, the checking whether the call is local is done if the LATAs are the same. Thus, if the LATAs are not the same, there is no disclosure of selecting a second carrier if the originating and terminating LATAs are the same, as required by claim 1.

We are not persuaded by the examiner's assertion (answer, page 10) of how three calls to different locations, using Culli's system, would result in the invention of claim 1. The examiner's use of three different calls is not consistent with the language of claim 1, which relates to the routing of a telephone call. As

the language of the claim refers to a calling party and a called party, we find that the calling party and the called party do not change. Thus, the examiner has not shown that a single call can be routed in a way to meet the limitations of claim 1.

Nor are we persuaded by the examiner's assertion (answer, page 11) that "there is no criticality of the claimed order either in the claims or the specification." The examiner is correct to the extent that the steps of a method are not generally required to be carried out in the order recited. The Federal Circuit held in Interactive Gift Express Inc. v. Compuserve Inc., 256 F.3d 1323, 1342-43, 59 USPQ2d 1401, 1416 (Fed. Cir. 2001) that:

Unless the steps of a method actually recite an order, the steps are not ordinarily construed to require one. See Loral Fairchild Corp. v. Sony Corp., 181 F.3d 1313, 1322, 50 USPQ2d 1865, 1870 (Fed. Cir. 1999) (stating that "not every process claim is limited to the performance of its steps in the order written"). However, such a result can ensue when the method steps implicitly require that they be performed in the order written. See Loral, 181 F.3d at 1322, 50 USPQ2d at 1870 (stating that "the language of the claim, the specification and the prosecution history support a limiting construction[, in which the steps must be performed in the order written,] in this case").

We find from the language of the claim that the claim recites "said method comprising the following steps in the order recited." In addition, from the language "responsive to a

determination that . . ." we find that each of the "responsive" steps require the previous step to have occurred prior to the "responsive step". Accordingly, we do not agree with the examiner (answer, page 11) that there is no criticality of the claimed order in the claims as the claim language itself requires the steps to be carried out in the order recited, and we agree with appellants (reply brief, pages 2 and 3) that in claim 1, each subsequent recited step depends on its preceding step.

Nor are we persuaded by the examiner's assertion (answer, page 11) that:

While the system of Culli et al. checks whether the destination NPANXX is within the local calling scope of the originator after it is determined that the LATAs are identical and the present invention determines whether a called party is inside a local calling scope of a calling party, and then compares the origination and terminating LATAs, either method has its pros and cons, both giving ample motivation for one of ordinary skill in the art to choose either method.

The fact that Culli checks the NPANXX after determining that the LATAs are identical, whereas appellants determine whether the called party is in a calling scope of a calling party and then checks the LATAs, is not in itself a reason for modifying the method of Culli to become the claimed method of claim 1. The examiner has not shown why the fact that both methods have pros

and cons is a motivation to modify Culli. The fact that the methods of Culli and appellants are different does provide an artisan the opportunity to choose either method, but this is not the same as a motivation to modify the method of Culli to arrive at the claimed method.

In addition, we note that the examiner's broad reference (answer, page 5) to col. 9, line 53 through col. 15, line 13, and col. 17, line 12 through col. 24 line 48 were not very helpful to us as these lengthy portions of the reference do not refer us to the precise passages of the reference relied upon by the examiner in making the rejection.

Nor are we persuaded by the examiner's assertion (final rejection, page 4), argued by appellants on page 7 of the brief, that:

Furthermore, in Col. 19, lines 5-20, Culli et al. teach an operational flow of the invention wherein the system is able to determine that a call is an intra-LATA call **due to the identical NPAs**. From this, it could even be argued that Culli et al. does in fact teach **also**, the comparing of NPANXX numbers before comparing LATAs, in which case, Culli et al. reads directly on the instant invention.

The passage of Culli referred to by the examiner is followed by the disclosure (col. 19, lines 11-14) that the ISCP then sends the dialing plan number of the calling party, the calling party

ID, and the NPANXX of the called party to the local database (LDB) 54 which determines whether the call is local. Because this passage refers to determining whether the call is local, we do not agree with the examiner that it follows that Culli teaches comparing NPANXX before comparing LATAs which reads directly on the instant invention.

From all of the above, we find that Culli fails to establish a prima facie case of obviousness of claim 1. Accordingly, the rejection of claim 1 is reversed. As independent claims 12 and 22 recite similar language in the formats of a system and a computer program product in a computer readable medium, the rejections of independent claims 12 and 22, as well as dependent claims 2-10, 13-21, and 23 is reversed.

To summarize, the decision of the examiner to reject claims 1-10 and 12-23 under 35 U.S.C. § 103 is reversed.

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